

S-5-6

S.B.CIVIL SECOND APPEAL NO. 91/2007
(Gopi Kishan Vs. Jaiprakash & Ors.)

Date:- 2.4.2007

HON'BLE MR. PRAKASH TATIA,J.

Mr. T.S.Champawat, for the appellant.

Heard learned counsel for the appellant.

The questions raised by the appellant is that the notice under Section 106 of Transfer of Property Act was not served upon the defendant tenant. The one notice under Section 106 Transfer of Property Act was given for two separate and independent rented premises, therefore, was not valid. The copy of the notice only was produced and that too was not only carbon copy of the notice but according to learned counsel for the appellant that copy was not proved. It is also submitted that in said copy, the name of advocate was not mentioned and there was even no initial.

I considered the submission by learned counsel for the appellant and perused the reasons given by the courts below holding that the notice was served upon the tenant

and the tenancy was terminated in accordance with law and the notice was valid.

The defendant in his written statement challenged the notice on the ground that the notice which was given by the plaintiff, was invalid because by one notice two tenancies were terminated. The defendant in his written statement has nowhere stated that he did not receive the notice. The courts below took note of this fact and in view of the vague denial, the courts could have drawn inference of the admission of receipt of notice. So far as termination of tenancy of two premises by the land lord by one notice, cannot be said to be illegal because of the reason that purpose of notice under Section 106 T.P.Act is of termination of the tenancy of the tenant and if the tenant can get the knowledge of termination of tenancy by the land lord then the purpose is achieved. So far as production of original notices is concerned, the landlord could not have produced the original notice as it was in possession of the defendant tenant. The carbon copy of the notice is admissible piece of evidence and that was rightly admitted in evidence. Identity of advocate who sent the notices could have been rebutted by the defendant by producing the original notice as he was in possession of the original notice and he could have

confronted, the plaintiff and his advocate with the notice in his possession to show that notice was not given by plaintiff witness advocate.

In view of the above reason, no substantial question of law is involved in this appeal. Hence, the appeal is dismissed. At this juncture, learned counsel for the appellant submits that tenant may be given some time to vacate the suit premises since the tenant is since in long possession and therefore, as per usual practice, they can be granted some time to vacate the suit premises. If appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession of the premises to the landlord by or before 31.12.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decretal amount, if due, within a period of two months from today before the trial court or will pay directly to the landlord, the decree under challenge shall not be executed till 1.1.2008. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court or pay directly to the landlord. In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable

forthwith.

Since the order has been passed in absence of the plaintiff respondents, therefore, they shall have liberty to approach this court for vacating the order granting time, if they feel aggrieved against granting time upto 31.12.2007.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA),J.